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05 UNITED STATES DISTRICT COURT
06 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

07 JOHN AUSTIN CHATFIELD,) CASE NO. C13-1687-MAT
08 Plaintiff,)
09 v.) ORDER RE: SOCIAL SECURITY
10 CAROLYN W. COLVIN, Acting) DISABILITY APPEAL
11 Commissioner of Social Security,)
12 Defendant.)
_____)

13 Plaintiff John Austin Chatfield proceeds through counsel in his appeal of a final
14 decision of the Commissioner of the Social Security Administration (Commissioner). The
15 Commissioner denied plaintiff's applications for Disability Income Benefits (DIB) and
16 Supplemental Security Income (SSI) after a hearing before an Administrative Law Judge
17 (ALJ). Having considered the ALJ's decision, the administrative record (AR), and all
18 memoranda of record, the Court orders this matter AFFIRMED in part and REVERSED and
19 REMANDED in part for further proceedings.

20 **FACTS AND PROCEDURAL HISTORY**

21 Plaintiff was born on XXXX, 1957.¹ He has a high school degree and some college,
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¹ Plaintiff's date of birth is redacted back to the year of birth in accordance with Federal Rule of

01 and past relevant work as a prep cook, which is classified as a cook helper. (AR 20, 33.)

02 Plaintiff filed an application for DIB and protectively for SSI on December 2, 2010,
03 alleging disability beginning May 30, 2010. Plaintiff's application was denied at the initial
04 level and on reconsideration, and he timely requested a hearing.

05 On July 19, 2012, ALJ Verrell Dethloff held a hearing, taking testimony from plaintiff
06 and a vocational expert. (AR 29-44.) On July 25, 2012, the ALJ issued a decision finding
07 plaintiff not disabled prior to May 25, 2012, but disabled after that date due to a change in his
08 age category. (AR 12-22.)

09 Plaintiff timely appealed the denial of disability prior to May 25, 2012. The Appeals
10 Council denied plaintiff's request for review on August 28, 2013 (AR 1-3), making the ALJ's
11 decision the final decision of the Commissioner. Plaintiff appealed this final decision of the
12 Commissioner to this Court.

13 **JURISDICTION**

14 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. § 405(g).

15 **DISCUSSION**

16 The Commissioner follows a five-step sequential evaluation process for determining
17 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it
18 must be determined whether the claimant is gainfully employed. The ALJ found plaintiff had
19 not engaged in substantial gainful activity since the alleged onset date. At step two, it must be
20 determined whether a claimant suffers from a severe impairment. The ALJ found plaintiff's
21 hepatitis C and amnestic disorder severe. The ALJ found the record did not support the

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Civil Procedure 5.2(a) and the General Order of the Court regarding Public Access to Electronic Case
Files, pursuant to the official policy on privacy adopted by the Judicial Conference of the United States.

01 existence of a severe joint impairment, and did not find depression to be a medically
02 determinable impairment.

03 Step three asks whether a claimant's impairments meet or equal a listed impairment.
04 The ALJ found that plaintiff's impairments did not meet or equal the criteria of a listed
05 impairment.

06 If a claimant's impairments do not meet or equal a listing, the Commissioner must
07 assess residual functional capacity (RFC) and determine at step four whether the claimant has
08 demonstrated an inability to perform past relevant work. The ALJ found plaintiff able to
09 perform light work as defined in 20 C.F.R. §§ 404.1567(b) and 416.967(b), but only able to
10 occasionally climb ramps, stairs, ladders, ropes, and scaffolds. Plaintiff should avoid
11 concentrated exposure to hazards, and can perform simple, repetitive tasks. Plaintiff cannot
12 work with the general public on a consistent basis. With that assessment, the ALJ found
13 plaintiff unable to perform his past relevant work since the alleged onset of disability of May
14 30, 2010.

15 If a claimant demonstrates an inability to perform past relevant work, the burden shifts
16 to the Commissioner to demonstrate at step five that the claimant retains the capacity to make
17 an adjustment to work that exists in significant levels in the national economy. The ALJ noted
18 that plaintiff's age category changed to "an individual of advanced age" on May 25, 2012,
19 pursuant to 20 C.F.R. §§ 404.1563 and 416.963. Using the framework of the
20 Medical-Vocational Guidelines, the ALJ found plaintiff was "not disabled" prior to that date,
21 because his limitations did not have a significant effect on his ability to perform unskilled light
22 work. (AR 21.) After that date, however, the ALJ found plaintiff "disabled" by direct

application of Medical-Vocational Rule 202.06.

This Court's review of the ALJ's decision is limited to whether the decision is in accordance with the law and the findings supported by substantial evidence in the record as a whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means more than a scintilla, but less than a preponderance; it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of which supports the ALJ's decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

Plaintiff argues the ALJ erred in failing to find his joint impairment severe at step two, erred in evaluating the credibility of his subjective symptoms, failed to give sufficient weight to the opinion of Norman Staley, M.D., and erred at step five by finding him not disabled without utilizing a vocational expert. Plaintiff argues these errors resulted in the assessment of an incorrect RFC. He requests remand for an award of benefits or, alternatively, for further administrative proceedings. The Commissioner argues that the ALJ's decision is supported by substantial evidence and should be affirmed.

Step Two

At step two, a claimant must make a threshold showing that his medically determinable impairments significantly limit his ability to perform basic work activities. *See Bowen v. Yuckert*, 482 U.S. 137, 145 (1987) and 20 C.F.R. §§ 404.1520(c), 416.920(c). “Basic work activities” refers to “the abilities and aptitudes necessary to do most jobs.” 20 C.F.R. §§ 404.1521(b), 416.921(b). “An impairment or combination of impairments can be found ‘not

01 severe' only if the evidence establishes a slight abnormality that has 'no more than a minimal
02 effect on an individual's ability to work.'" *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir.
03 1996 (quoting Social Security Ruling (SSR) 85-28). "[T]he step two inquiry is a de minimis
04 screening device to dispose of groundless claims." *Id.* (citing *Bowen*, 482 U.S. at 153-54).
05 An ALJ is also required to consider the "combined effect" of an individual's impairments in
06 considering severity. *Id.*

07 A diagnosis alone is not sufficient to establish a severe impairment. Instead, a claimant
08 must show that his medically determinable impairments are severe. 20 C.F.R. §§ 404.1520(c),
09 416.920(c). He must, therefore, present evidence of a medically determinable impairment,
10 through signs, symptoms, and laboratory findings, that has lasted or can be expected to last for
11 a continuous period of not less than twelve months. *Ukolov v. Barnhart*, 420 F.3d 1002,
12 1004-05 (9th Cir. 2005).

13 Plaintiff argues the ALJ erred by failing to find his joint impairments severe.
14 However, the Court finds the ALJ in this case reasonably found an absence of evidence to
15 support the existence of a severe joint impairment causing more than minimal functional
16 limitations for a twelve month period. (AR 15.) The ALJ noted references in the medical
17 records to neck and right arm pain in September 2011 (AR 294), with multilevel degenerative
18 changes shown on MRI in November 2011 (AR 295). However, plaintiff subsequently
19 reported improvement after a trigger point injection and medication, and when plaintiff
20 reported pain and tingling in November 2011, it was in a non-diagnostic stocking glove
21 distribution. In February 2012, plaintiff's wrists and elbows had full range of motion and he
22 was taking no medications. (AR 290.) His neuropathy had resolved and he did not follow

01 through with the neurologist. (*Id.*) See *Allen v. Comm’r of Social Sec. Admin.*, No. 11-16628,
02 2012 U.S. App. LEXIS 23739 at *5 (9th Cir. Nov. 19, 2012) (an impairment that can be
03 adequately controlled by medication is not severe).

04 While plaintiff disputes the ALJ’s characterization of the x-ray findings (AR 283-89) as
05 “minimal” (Dkt. 14 at 7, AR 15), there is no medical evidence that these findings could
06 reasonably be expected to produce the symptoms alleged by plaintiff, or to significantly limit
07 his ability to do basic work activities. None of the medical opinions included a finding of such
08 an impairment. While plaintiff testified at hearing about the presence of wrist and elbow joint
09 pain (AR 17, 34-37), the ALJ found plaintiff’s statements not credible, as discussed below.

10 Plaintiff also argues that even if his joint impairments were not severe, the ALJ should
11 have accounted for the nonsevere limitations caused by those conditions in his RFC assessment.
12 (Dkt. 14 at 8.)² Plaintiff has not identified any functional limitations the ALJ should have
13 included in the RFC assessment, however, and thus has failed to allege a harmful error. See
14 *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012) (an error is harmless where it is
15 “‘inconsequential to the ultimate nondisability determination’”) (quoting *Carmickle v. Comm’r*
16 *of Social Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008)).

17 Plaintiff does not establish the ALJ erred either in failing to find his joint impairments to
18 be severe or to account for any such limitations in the RFC assessment. The ALJ’s step two

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20 2 Plaintiff also mentions a lack of inclusion of any mental health impairments in the RFC, but
21 fails to explain the assertion or offer any argument. Absent any other similar reference elsewhere in
22 plaintiff’s assignments of error, the Court finds it likely the reference to mental health impairments
represents a scrivener’s error. If not, the Court finds the claim waived. See *Avila v. Astrue*, No.
C07-1331, 2008 U.S. Dist. LEXIS 79271 at *5-6 (E.D. Cal. Sept. 2, 2008) (citing *Northwest Acceptance*
Corp. v. Lynnwood Equip., Inc., 841 F.2d 918, 923-24 (9th Cir. 1996) (party who presents no
explanation in support of claim of error waives issue); *Independent Towers of Washington v.*
Washington, 350 F.3d 925, 929 (9th Cir. 2003)).

01 finding has the support of substantial evidence and will not be disturbed.

02 Credibility

03 Absent evidence of malingering, an ALJ must provide clear and convincing reasons to
04 reject a claimant's testimony. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007)
05 (quoting *Bunnell v. Sullivan*, 947 F.2d 341, 344 (9th Cir. 1991)). *See also Vertigan v. Halter*,
06 260 F.3d 1044, 1049 (9th Cir. 2001). "General findings are insufficient; rather, the ALJ must
07 identify what testimony is not credible and what evidence undermines the claimant's
08 complaints." *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1996). "In weighing a claimant's
09 credibility, the ALJ may consider his reputation for truthfulness, inconsistencies either in his
10 testimony or between his testimony and his conduct, his daily activities, his work record, and
11 testimony from physicians and third parties concerning the nature, severity, and effect of the
12 symptoms of which he complains." *Light v. Social Sec. Admin.*, 119 F.3d 789, 792 (9th Cir.
13 1997).

14 In this case, the ALJ found that, while plaintiff's medically determinable impairments
15 could reasonably be expected to cause some of the alleged symptoms, he did not find all of
16 plaintiff's symptom allegations credible. Again, the Court is not persuaded by plaintiff's
17 challenges to the ALJ's decision.

18 A. Objective Evidence

19 Plaintiff notes the ALJ may not discredit his testimony about the severity of his
20 symptoms solely because they are not supported by objective medicine. Nevertheless,
21 "[w]hile subjective pain testimony cannot be rejected on the sole ground that it is not fully
22 corroborated by objective medical evidence, the medical evidence is still a relevant factor in

01 determining the severity of the claimant's pain and its disabling effects.” *Rollins v.*
02 *Massanari*, 261 F.3d 853, 857 (9th Cir. 2001); SSR 96-7p. Here, the ALJ gave a number of
03 valid reasons for his credibility findings.

04 The ALJ found the objective medical evidence to be consistent with some limitations,
05 but not to the extent alleged by plaintiff. The ALJ noted plaintiff told Dr. Benedict Garry in
06 April 2010 that he was “fatigued at times”, that the fatigue “came and went”, and that he was
07 feeling “ok”. (AR 17, 242-43.) Plaintiff’s physical exam was normal. When seen again
08 several months later in September 2010, he reported feeling “fine” but tired, and his
09 examination was unremarkable. (*Id.*; AR 239.) The same month, Dr. Wakelin evaluated
10 plaintiff as having normal physical exam findings, and plaintiff did not report any symptoms or
11 fatigue. He was instructed to follow up when he decided to initiate eradication therapy for his
12 hepatitis C. (AR 17-18, 250-51.) In May 2011, plaintiff reported feeling fatigued and run
13 down for several months. Physical findings were within normal limits. The plan was to
14 “consider” treatment for Hepatitis C. (AR 18, 238.) In February 2012, Dr. Blackadar noted
15 plaintiff’s report of being “always tired” for a year and a half, but blood work was “only mildly
16 elevated”, and plaintiff was not being followed by a specialist. Physical exam findings were
17 unremarkable. Under those circumstances, Dr. Blackadar was “unwilling to declare” plaintiff
18 disabled. (AR 290.) In May 2012, plaintiff reported pain and fatigue to primary care
19 physician Kevin Welk MD, but no significant exam findings were reported. (AR 281.)

20 In this case, as one of several different reasons offered in support of the credibility
21 assessment, the ALJ reasonably construed the objective medical evidence as “scant” and
22 containing largely unremarkable objective findings. (AR 18.) While plaintiff objects to the

01 ALJ's characterization of his complaints as "debilitating fatigue" (Dkt. 14 at 13), there is no
02 evidence the ALJ applied an incorrect standard in considering the lack of objective evidence
03 support for plaintiff's allegations of an inability to work because of his impairments. (AR 17.)

04 B. Daily Activities

05 One need not be "utterly incapacitated" in order to be found disabled under the Social
06 Security Act. *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989). Nonetheless, evidence of a
07 claimant's activities may form the basis of an adverse credibility determination where those
08 activities contradict the claimant's testimony or meet the threshold for transferable work skills.
09 *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) (citing *Fair*, 885 F.2d at 603). *See also*
10 *Molina*, 674 F.3d at 1112-13 ("While a claimant need not "vegetate in a dark room" in order
11 to be eligible for benefits, the ALJ may discredit a claimant's testimony when the claimant
12 reports participation in everyday activities indicating capacities that are transferable to a work
13 setting. Even where those activities suggest some difficulty functioning, they may be grounds
14 for discrediting the claimant's testimony to the extent that they contradict claims of a totally
15 debilitating impairment.").

16 Plaintiff told his doctor that he did his own cooking, cleaning, shopping, and laundry,
17 had no problem performing personal care, was able to drive a car, did some lawn mowing,
18 managed his own money, read and watched television, and collected coins. He visited with
19 friends once a week, grocery shopped several times a week, and occasionally played pool. He
20 indicated he could lift about twenty pounds and could walk for about ten minutes. The ALJ
21 reasonably found these activities showed a capacity for concentration consistent with at least
22 simple tasks, intact social functioning, and an ability to be in public. (AR 19.) The ALJ

01 found the exertional abilities reported by plaintiff to be consistent with an ability to perform
02 light work and “particularly when considered in light of the minimal medical evidence and
03 limited objective findings”, to render plaintiff’s claim of a total inability to work as less
04 credible. (AR 19, 233, 270.) Plaintiff fails to establish that the ALJ’s conclusion was not
05 rational.

06 C. Other reasons

07 The ALJ also provided other additional clear and convincing reasons for finding
08 plaintiff less than fully credible, which plaintiff neither mentions, nor challenges. *See*
09 *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir. 2011) (ALJ appropriately considers
10 inconsistency with the evidence and a tendency to exaggerate in rejecting a claimant’s
11 testimony); *Greger v. Barnhart*, 464 F.3d 968, 972 (9th Cir. 2006) (ALJ may consider a
12 claimant’s inconsistent or non-existent reporting of symptoms); *Tommasetti v. Astrue*, 533 F.3d
13 1035, 1039 (9th Cir. 2008) (ALJ appropriately considers an unexplained or inadequately
14 explained failure to seek treatment or follow a prescribed course of treatment); and *Parra v.*
15 *Astrue*, 481 F.3d 742, 750-51 (9th Cir. 2007) (stating that “evidence of ‘conservative treatment’
16 is sufficient to discount a claimant’s testimony regarding severity of an impairment”). *See*
17 *also Molina*, 674 F.3d at 1111 (upholding ALJ’s credibility assessment where ALJ provided
18 valid reasons despite one or more invalid reasons for disbelieving a claimant’s testimony). For
19 all of the reasons set forth above, plaintiff fails to demonstrate reversible error in the ALJ’s
20 credibility assessment.

21 Medical Opinion Evidence – Dr. Staley

22 Plaintiff argues the ALJ erred by relying on the opinions of Dr. Staley (AR 72-80),

01 whose consultative evaluation report was written before plaintiff's x-rays and MRI were
02 performed. Plaintiff argues the findings in these tests "may impose additional limitations even
03 though his cervical symptoms subsided." (Dkt. 14 at 15.) However, as discussed above,
04 there is no medical evidence these findings could reasonably be expected to significantly limit
05 his ability to do basic work activities or even to produce the symptoms alleged by plaintiff.
06 The Court does not find error in the ALJ's consideration of Dr. Staley's opinions.

07 Step Five – Medical-Vocational Guidelines

08 The Medical-Vocational Guidelines, or "grids", present a short-hand method for
09 determining the availability and numbers of suitable jobs for claimants, addressing factors
10 relevant to a claimant's ability to work, such as age, education, and work experience. *See* 20
11 C.F.R. Pt. 404, Subpt. P, App 2. Their purpose is to streamline the administrative process and
12 encourage uniform treatment of claims. *Tackett v. Apfel*, 180 F.3d 1094, 1101 (9th Cir. 1999).

13 An ALJ may rely on the grids to meet his burden at step five. *Burkhart v. Bowen*, 856
14 F.2d 1335, 1340 (9th Cir. 1988). "They may be used, however, 'only when the grids
15 accurately and completely describe the claimant's abilities and limitations.'" *Id.* (quoting
16 *Jones v. Heckler*, 760 F.2d 993, 998 (9th Cir. 1985)).

17 The existence of a non-exertional limitation does not automatically preclude application
18 of the grids. *Desrosiers v. Secretary of Health & Human Servs.*, 846 F.2d 573, 577 (9th Cir.
19 1988). *See also* SSR 83-14 ("Nonexertional impairments . . . may or may not significantly
20 narrow the range of work a person can do."); *Razey v. Heckler*, 785 F.2d 1426, 1430 (9th Cir.
21 1986) ("The regulations . . . explicitly provide for the evaluation of claimants asserting both
22 exertional and nonexertional limitations. [20 C.F.R. Pt. 404, Subpt. P, App. 2] at § 200.00(e)."),

01 *modified at* 794 F.2d 1348 (1986). Instead, the ALJ must determine whether the
02 non-exertional limitations are “‘sufficiently severe’ so as to significantly limit the range of
03 work permitted by the claimant’s exertional limitations[.]” *Burkhart*, 856 F.2d at 1340
04 (quoting *Desrosiers*, 846 F.2d at 577). If so, the grids are inapplicable and the testimony of a
05 vocational expert (VE) is required. *Id.*

06 Plaintiff argues the ALJ erred by relying on Rule 202.14 to find plaintiff not disabled at
07 step five. This rule provides that an individual of plaintiff’s age, education, and work
08 experience is not disabled if he is capable of performing light work and does not have
09 nonexertional limitations that significantly limit the universe of light work.

10 Plaintiff’s argument is based, in part, on his contention the ALJ erred by failing to
11 include limitations caused by his joint pain and by failing to credit his complaints of fatigue.
12 These arguments are derivative of plaintiff’s unsuccessful previous assignments of error.
13 However, the Court finds merit in plaintiff’s argument the ALJ’s restriction on plaintiff’s
14 ability to work with the general public on a consistent basis constitutes a significant erosion on
15 the universe of light work, particularly when considered in conjunction with the ALJ’s
16 restriction of plaintiff to simple, repetitive tasks.

17 The ALJ cited SSR 85-15 to support his finding that plaintiff’s nonexertional limitations
18 do not significantly limit the range of work contemplated by the grids. The ALJ assessed
19 plaintiff as able to perform simple, repetitive tasks and not able to work with the general public
20 on a consistent basis. (AR 16.) However, as discussed below, SSR 85-15 does not justify the
21 ALJ’s sole reliance on the grids in light of the nonexertional limitations assessed.

22 SSR 85-15 reflects that basic mental demands of unskilled work include the ability to

01 “understand, carry out, and remember simple instructions[,] to respond appropriately to
02 supervision, coworkers, and usual work situations[,] and to deal with changes in a routine work
03 setting.” SSR 85-15. The ruling further states that “[a] substantial loss of ability to meet any
04 of these basic work-related activities would severely limit the potential occupational base.” *Id.*
05 While SSR 85-15 could be said to account for the RFC assessment in part, it does not, for
06 example, account for the limitation on work with the general public.

07 The ALJ cited a number of cases from this Circuit as well as from other circuits finding
08 certain nonexertional limitations to not significantly erode the occupational base of jobs set out
09 in the grids. None of these cases are directly on point with regard to the specific nonexertional
10 limitations imposed by the ALJ in this case. *Compare Cowen v. Comm’r of Soc. Sec.*, No.
11 08-17641, 2010 U.S. App. LEXIS 21804 at*4 (9th Cir. Oct. 22, 2010) (finding work at the
12 medium exertional level not significantly diminished by limitations on public contact and
13 unskilled entry-level work), *with Polny v. Bowen*, 864 F.2d 661, 663-64 (9th Cir. 1988) (finding
14 application of grids inappropriate where ALJ limited claimant to jobs that were not highly
15 stressful, did not require comprehension of complex instructions, and did not require dealing
16 with the public).

17 In sum, the ALJ’s decision lacks substantial evidence support for the conclusion that the
18 grids completely and accurately account for the assessed limitations. Because the ALJ
19 improperly relied solely on the grids in reaching his step five conclusion, this matter is
20 remanded for further evaluation at step five, with the assistance of a VE.

21 CONCLUSION

22 For the reasons set forth above, this matter is REMANDED for further proceedings

01 consistent with this Order.

02 DATED this 4th day of April, 2014.

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05 Mary Alice Theiler
06 Chief United States Magistrate Judge
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